

REMARKS

In response to the above-identified Office Action, the following remarks and the Declaration of Stewart Young (the "Young Declaration") are offered. Reconsideration and withdrawal of the pending rejections are respectfully requested.

Finality Should Be Withdrawn

Initially, the finality of this Action is premature based on a new ground of rejection not necessitated by amendment. Claims 13-15 were alleged in the prior Action to be anticipated by the Korhonen reference. No changes were made to those claims themselves, and the amendment to independent claim 1 did not alter the scope of that claim or any other. Respectfully, the record is very clear that these claims were included in the anticipation rejection of the prior action, are a part of an obviousness rejection in this action, and were not altered in between.

The present Office Action suggested that the original anticipation rejection of these claims was a typographical error. If so, fairness dictates that such an error should not be detrimental to the Applicant, who answered the anticipation rejection in good faith on the merits by stating that the Korhonen reference did not have a feature recited in those claims. The treatment of claims 13-15 did not appear to Applicants' counsel to be a typographical error. The listing of claims in the prior action under the anticipation rejection went straight through from 1 to 23, not suggesting any breaks in that sequence, much less a specific exclusion of claims 13-15. The listing of claims under the pertinent obviousness rejection in that prior action began at 35, and listed five claims individually in addition to the group of claims 39-42. Had there been breaks in the sequence of the former listing, or a listing in the latter that appeared to involve a mistaken keystroke, then perhaps Applicants' counsel might have thought a typographical error existed. Whatever the

source of the Examiner's error, however, it is respectfully maintained that the result of it and the Applicants' treatment of it in good faith should not be the penalty of finality of this Office Action.

The Rejections Under Section 112 Were Previously Addressed

The present Office Action has included the same section 112 rejections given in the prior Office Action. However, those issues were addressed in the prior response, so that "the first rod connecting portion" is no longer present in claim 5, and "slidable" was changed to "slidably" in claims 10 and 22. Consequently, the language objected to in the present Office Action is not in the noted claims. Withdrawal of these rejections is respectfully requested.

Response to Examiner's Comments

Applicants thank Examiner Cumberledge for his comments regarding the prior response and the references, given in pages 14-17. Several points must be noted concerning them.

The Examiner first explained that he agreed that treating the single item 18 of Korhonen as two separately-recited parts (a first shaft and a first rod connector) is not appropriate. However, the Office Action then goes on to treat the single item 24/24a of Korhonen as two separately-recited parts, namely the "projection extending laterally from said first shaft" of the connector and the "stud extending from the body" of the interconnection element.

The logic that persuaded the Examiner before is equally applicable to his new analysis. Korhonen's item 24/24a is unquestionably a single piece: "The crosslink rod 24, 24a is shown in broken form in FIG. 4 for purposes of clarity, but is actually a continuous rod." Korhonen, col. 3, ll. 33-35; see also Young Declaration, ¶8. Claim 1 recites that its interconnection element has a body with an aperture and a stud extending from the body, and further recites a first rod

connector that has (1) a first shaft terminating in a rod engaging portion and (2) a projection extending laterally from that shaft and displaced axially along that shaft from the rod engaging portion. The shaft and projection are received in the aperture of the interconnection element. The single-piece item 24/24a logically cannot be both a stud that extends from a body and its aperture and a projection from a separate piece that is received in that aperture. Just as Korhonen's item 18 could not be both a shaft and a connector, its item 24/24a cannot be both the stud and the projection as recited in claim 1.

Korhonen's item 24/24a also does not fit the arrangement of the "projection" given in claim 1. The projection extends "laterally" from the first shaft (alleged to be item 18 of Korhonen) and is displaced "axially" from the rod engaging portion (also alleged to be part of item 18). The terms "laterally" and "axially" mean orthogonal directions; "axially" means along the axis of something, while "laterally" means offset from that axis. The item 24/24a extends in only one direction relative to item 18, i.e., to the left in Korhonen's Figure 4. If an axis of item 18 is chosen so that item 24/24a extends to the side of that axis (or "extends laterally" from item 18), then end 24a of item 24/24a is also "lateral" to item 18, not "displaced axially" from it. Conversely, if an axis of item 18 is chosen so that end 24a of item 24 is displaced from item 18 along it (or "axially"), then the rest of item 24/24a is also oriented axially and not laterally. As paragraph 8 of the Young Declaration confirms, item 24/24a is unidirectional, not something that has features extending to the side.

The Office Action's characterization of 24a as a pin that protrudes from item 24/24a is not consistent with the Korhonen's text, which unmistakably identifies item 24/24a as one single unitary piece. It is not logical to say that an end portion of a uniform cylinder is something separate from the cylinder, much less a pin that extends from an undefined part of itself.

Respectfully, item 24/24a is not a part of Korhonen's item 30, which the Office Action characterized as an "interconnection element." Item 30 does not include item 24/24a, and so it cannot be the "interconnection element" of claim 1 that includes a stud. The reason Korhonen's Figure 4 apparently shows item 24/24a extending from item 30 is that that Figure is an exploded view. Figures 2-5 establish that item 24/24a cannot extend beyond the end of item 30. Item 30 must be substantially flush against wall 56 (Figure 4), otherwise it will come apart from item 28 (as seen in Figure 5). Item 24/24a cannot move beyond wall 56, and in most cases will not approach wall 56 (Figures 1-2), and so there is no disclosure of item 24/24a moving beyond item 30 when the Korhonen device is used. Figure 4's exploded view does not represent the device in use, but only takes the pieces apart for a clearer representation. Contrary to the present Action, Korhonen does not show a stud included on an "interconnection element," and it does not and cannot show a stud extending from an "interconnection element."

It is also not understood how the present Office Action concluded that the claims have no limitation requiring that the stud is structurally different from the projection. As noted above, the stud recited in claim 1 is included on the recited interconnection element, and the recited projection is on a different piece, the shaft of the first rod connector. The shaft is received in the aperture of the interconnection member, establishing that the interconnection member and the shaft are two different pieces. If the stud and projection are on two different pieces, they must in fact be separate structures.

The pending Office Action's comment on page 15 regarding "functional statements" is not a correct statement of the law, as pointed out in prior responses. Moreover, the Action is incorrect to state that item 18 (the "first shaft" according to page 6 of the Action) and item 24/24a (the "projection" according to the same source) are capable of being placed into an

aperture in item 30. No part of item 18 can fit into item 30 in any way, as is made clear by all of Korhonen's drawings and the Young Declaration, ¶7. There is no corner of item 18 that is placed in item 30, as is shown in all of Korhonen's drawings. Items 18 and 30 cannot be the "first shaft" and "interconnection element" of claim 1 because there is no possibility that item 18 can be received (slidably or otherwise) in any aperture of item 30, as claim 1 recites of its "first shaft" and "interconnection element."

The comments concerning the fact that Korhonen cannot be combined with the secondary Shluzas, Sherman and Burgess references do not contradict the points made in the prior response. Those points demonstrate that one of ordinary skill in the art, starting from the teachings of the references and without the teachings of the present application, would not be motivated or see a reasonable possibility of success in combining them. See also, e.g., Young Declaration, ¶¶18-24. Certainly if it is physically impossible or undesirable to combine features from references, the person of ordinary skill will recognize that fact, and will not see advantage or a possibility of success in making the combination.

The Young Declaration Demonstrates Non-Anticipation and Nonobviousness

The Young Declaration provides further evidence concerning how one of ordinary skill in this art views the Korhonen reference. It is straightforward in its explanation of Korhonen and other references, and their inability to anticipate or render obvious the pending claims.

Several aspects of independent claims 1 and 44 are particularly noted as missing from Korhonen. For example, as stated in the Declaration item 24/24a is a one-piece uniform cylinder that is unconnected to cap 30, and the two are only locked with respect to each other by a screw 41. Cap 30 is not an "interconnection element" as recited in claim 1 because it does not have a

stud (Young Declaration, ¶6), and as seen in Figure 3 cap 30 does not contact any part of item 24/24a. Item 24/24a is completely straight, with nothing laterally extending from it. Even given the associations of parts of Korhonen with features of the claims, the Declaration demonstrates how the reference fails to anticipate. See, e.g., Young Declaration, ¶7.

The Young Declaration also specifically addresses certain dependent claims, such as claims 8, 11, 13, 18, 31, 35, 39-40, and 60-61. These passages note how the person of ordinary skill understands the Korhonen reference and the features of the claims that are absent from it.

As to claim 55, the Young Declaration shows that the Shluzas reference, even if combinable with Korhonen, does not include a restriction of movement by an insert. Taken together, the Shluzas and Korhonen references do not show one of ordinary skill all aspects of claim 55.

The Young Declaration also notes that the washers and other features recited at least in claims 13, 24 and 37-38 are not seen in Korhonen, and that one of ordinary skill would see that adding such washers in the way recited in the claims to Korhonen would impede or prevent the proper operation of Korhonen. This evidence of changed operating principles, inoperativeness and/or undesirability is further proof of nonobviousness.

The entirety of the Young Declaration should be considered by the Examiner for its confirmation of the non-anticipation and nonobviousness of the pending claims. The Declaration was not available previously, and so it should be considered on that basis and due to the premature finality of the current Action.

The Pending Rejections Should Be Withdrawn

For at least the reasons given above and in prior responses (which are incorporated herein by reference), the claims are not anticipated by Korhonen or obvious over it in combination with

any of the relied-on references. Korhonen does not show all elements of independent claims 1, 43, 44, 52, 53, or 58, or elements of a number of dependent claims. For the sake of brevity, a full repetition of the reasons previously given will not be repeated verbatim, but the Examiner is respectfully requested to review and consider them in light of the discussion above.

Conclusion

To summarize, it is respectfully maintained that the pending claims are not anticipated by or obvious over Korhonen and the other relied-on references for at least the above reasons. It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion. Further, no necessary narrowing amendments have been made, and thus it is believed that the claims should be entitled to the entire scope permitted by their language, including equivalents.

In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. If the Examiner feels that any issues remain, the Examiner is requested to contact the Applicant's undersigned representative by telephone.

Respectfully submitted,


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